SUPREME COURT, U. S.

SEP 29 1961

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 347

FINE FASHIONS, INC.,

Petitioner,

v.

CHRIS L. GROSS, District Director of Internal Revenue for the District of Camden, New Jersey, THE UNITED STATES OF AMERICA and PENN GARMENT COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S REPLY BRIEF

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Of Counsel.

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The nub of the Government's argument that Penn had title to the cloth is that Penn bore "the primary responsibility" for the cost of it. This statement, even if correct, would be without legal significance on the matter of title, and, furthermore, it is not supported by the record. The Government's emphasis on payment in relation to the question of title (successful below) serves only to confuse the issue. The fact that ultimately petitioner was to be paid for the cloth out of the proceeds of the assignment is meaningless on the question of title.

It is obvious that Penn did not bear "primary responsibility" for the cost of the cloth. That responsibility was always petitioner's and was discharged by petitioner by payment to Reeves. The Government's argument concedes that what it calls Penn's "primary obligation" was neither primary nor an obligation—it was completely conditional. The Government states that this obligation was "to be met through its assignment" of the proceeds of the government contract. The assignment itself did not provide the funds. If for any reason Penn could not complete the contract, there would be no proceeds and there would be no payment. That, precisely, is what occurred.

The question of title is not to be determined by how petitioner might be repaid for the cloth. Title is to be determined entirely by the legal effect of what actually transpired between Reeves, the original owner and transferor of the cloth and petitioner, the purchaser, which directly and unconditionally promised and later made payment for it. It was only at that point, in October 1957, that petitioner's title was established. Linde's reference to "guarantee", made three months earlier, had no effect on the title rights which arose in consequence of the purchase contract consummated between Reeves and petitioner.

The Government argues that petitioner did not inspect the cloth or uniforms and permitted Penn to make delivery of uniforms. That was the purpose of the arrangement. Petitioner made the cloth available to Penn solely for the purpose of the government contract and all responsibility under the contract rested on Penn. Petitioner did not inspect the cloth

or concern itself about the uniforms because Penn, not petitioner, was the contractor. None of the things the Government mentions as being done by Penn created any title rights in Penn or indicate the existence of such rights. What Penn did was only to discharge its obligation to petitioner of performing the government contract for which petitioner had supplied the cloth.

Petitioner, as stipulated, was to make the cloth "available to Penn solely for the purpose of said contract". That sole, restricted right was not the equivalent of title. If Penn had had title, it could have done as it pleased with the cloth. The Government, however, has stipulated that Penn's only right was to use the cloth for the restricted purpose imposed by petitioner. That stipulation is a concession by the Government that Penn did not have title.

CONCLUSION

The prayer of the petition should be granted.

Respectfully submitted,

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New York, September 28, 1961